

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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2784

**FILE:** B-214154

**DATE:** February 10, 1984

**MATTER OF:** CeleNav Industries, Inc.

**DIGEST:**

Protest alleging that agency improperly failed to select proposal for award under Defense Small Business Advanced Technology Program is untimely since protest was filed with GAO more than 10 working days after firm's notice of initial adverse agency action on protest filed with contracting agency or, alternatively, more than 10 working days after basis for protest was known.

CeleNav Industries, Inc. (CNI) protests the Department of the Navy's failure to select its proposal for award under the Defense Small Business Advanced Technology Program (DESAT). The DESAT program encourages small business firms to propose research and development efforts in specified areas of technology for the Department of Defense. Proposals submitted under the DESAT program were evaluated in three phases: phase I for preliminary research and development, phase II for advanced development contracts, and phase III for production contracts. CNI, which was awarded a phase I contract for the development of a new prototype sextant, was not chosen by the Navy for further participation under phase II of the program. CNI contends that it was not selected because of an erroneous evaluation by the Navy which allegedly evaluated its proposal in the wrong technical category. We dismiss the protest as untimely.

Thirty-six contractors received phase I awards based on proposals submitted in the following topic areas:

1. Target Selection and Location
2. Ocean Physics and Engineering Research
3. Computer and Software Engineering
4. Human Factors and Personnel
5. Materials

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CNI designated its proposal for a prototype sextant for consideration under topic 2.

By letter dated February 28, 1983, the Navy advised CNI of the names of the 15 contractors selected for further funding under phase II of the program. CNI was not listed among those firms. CNI states, however, that upon inquiry, it was told that the Navy's selections were not final. Subsequently, by letter dated March 18, 1983, the Navy advised CNI of the reasons for not selecting CNI's proposal for award under topic 1, which the Navy, without apparently informing CNI, had previously determined to be the appropriate topic area for consideration of CNI's proposal. Upon further inquiry, CNI states that it was then told that its non-selection under topic 1, rather than topic 2, was in error and that the Navy's selection decisions were still not final. Thereafter, a lengthy exchange of correspondence among CNI, CNI's Congressional representative, and the Navy followed.

Finally, by letters dated November 15 and 25, 1983, CNI objected directly to the Chief of Naval Research (CNR), United States Navy, contending that the evaluation of its proposal in the wrong category (topic 1) "resulted in a denial of [CNI's] phase II contract to date." CNI therefore requested intervention by the CNR to "rectify this . . . unjustifiable action." More specifically, CNI's November 25 letter, sent by direction of its corporate board of directors, "insisted" that the Navy reevaluate its "phase II proposal under topic 2." By letter dated December 9, the CNR explained that the Navy did not consider CNI's proposal to have been evaluated in the wrong category; that CNI's proposal was properly evaluated under topic 1 which the Navy considered the most suitable category to maximize small business opportunity within the DESAT program; that CNI's proposal was evaluated during phase I and phase II under topic 1; and that the proposal did not, in any event, receive a high enough score to justify further funding. The CNR therefore refused to take corrective action.

Our Bid Protest Procedures require that protests other than against improprieties apparent in a solicitation be filed with our Office within 10 working days of the date on which the basis for protest is known or should have been known, 4 C.F.R. § 21.2(b)(2) (1983), or within 10 working days of actual or constructive notice of initial adverse agency action on a protest first presented to the agency. 4 C.F.R. § 21.2(a). If we consider CNI's letters of

November 15 and 25 to be the lodging of a timely protest to the agency, a subsequent protest to our Office had to be filed within 10 working days of actual or constructive knowledge of initial adverse agency action with respect to the agency protest. CNI was specifically advised of the Navy's adverse position on the matter by the CNR's December 6 letter, which was received by CNI no later than December 14. The protest to our Office was filed on January 17, 1984, not within 10 working days of December 14, and therefore is untimely under section 21.2(a) of our procedures.

Alternatively, if we do not view CNI's letters as a protest to the agency, then we must conclude that CNI was aware of its basis of protest when it sent those letters to the CNR in November (the issues raised in those letters and the issues raised in CNI's protest to our Office are identical) and its protest filed here later than 10 working days thereafter is untimely under section 21.2(b)(2) of our procedures.

Consequently, giving CNI the benefit of every doubt concerning any knowledge about the basis of its protest that it may have acquired during the previous exchange of correspondence with the Navy, we find the protest to be untimely and we will not consider the matter on the merits.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel